GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute.—Industrial Dispute between the Workmen and the Management of M/s. Avery Company of India Private Ltd., 13, Central Street, Bangalore-1.

Award of the Labour Court, Bangalore—published.

Read the following papers :

Letter No. 1060/68-69, dated 27th December 1968 from Shri M.K. Srinivasa Iyengar, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE

Dated this 27th day of December 1968.

PRESENT :

Sri K. M. Srinivasa Iyengar, B.SC., LL.B., *Presiding Officer.*

REFERENCE No. 40 OF 1967.

I Party—

Workmen represented by the President, Engineering Workers Association, 9, Andhra Devanga Building, Gandhinagar, Bangalore-9.

Vs.

II Party—

The Management of M/s. Avery Company of India Private Ltd., 13, Central Street, Bangalore-1.

REFERENCE :

Government Order No. LMA 187 LLD 67, dated 2nd May 1967.

AWARD

The Government of Mysore being of opinion that an Industrial Dispute existed between the workmen and the management of Avery Company of India (Private) Ltd., Bangalore-1, has referred, by its Order LMA 187 LLD 67, dated 2nd May 1967 the following points of dispute for adjudication by this Court :—

> "Is the management of M/s. Avery Company of India Private Ltd., 13, Central Street, Civil Station, Bangalore-1 is justified in terminating the services of Sri J. O. D'Cruz, from 8th June 1966? Is he entitled for reinstatement with continuity of service and back wages"?

the aggrieved worker J. O. D'Cruz is represented by the Engineering Employees' Association. His services were terminated by a memo, dated 8th June 1966 with a month's pay in lieu of notice. It was contended that the termination was without enquiry and even though a charge sheet had been given to him accusing him of misconduct and he had given an explanation, he came to be discharged from service by giving him a month's notice pay and this was not *bona fide* and amounted to victimisation. It was stated that the management had taken a stand that he was a supervisor and not a workman and this was not correct. It was pleaded that though he was appointed as a contract supervisor his designation had been changed to charge-hand in 1963 and he never worked as supervisor but continued to discharge his duties as per instructions given by the superiors. The prayer made in the cliam statement was that the management should be directed to reinstate him in service with continuity of service and consequential benefits.

The company filed a counter statement in which it denied that no enquiry had been held and pleaded that the termination of service was quite valid and justified and that it was not a case of victimisation and the action taken was *bona fide* and in accordance with the terms of the employment. It pleaded that J. O. D'Cruz was employed as a supervisor and at the time of the termination of his service was in receipt of wages exceeding Rs. 500 per month and he being employed in a supervisory capacity and drawing wages exceeding Rs. 500 per month was excluded from the purview of the Industrial Disputes Act and was not a workman as defined in the Act and accordingly there was no dispute which this court can take cognizance of and this court had no jurisdiction to entertain or adjudicate upon the dispute.

In the light of the pleadings the following preliminary issues were framed by my predecessor in office :—

(1) Does the I Party prove that Sri J. O. D'Cruz is a workman falling within the definition of Section 2(s) of the Industrial Disputes Act, 1947?

(2) If not, has this court jurisdiction to adjudicate upon the dispute

On behalf of the I Party five witnesses including the aggrieved worker have been examined. The II Party has examined three witnesses.

The material averments in the claim petition in support of the stand that he was a workman are: that he joined the Company at Madras in 1949 and in a letter of appointment being issued he signed an agreement on 31st March 1949. He had to work under the direct supervision of the Madras Branch either at Madras or Coimbatore on basic salary of Rs. 125 p.m. in addition to D.A. based on cost of living index. He was on probation for six months and after confirmation the company issued him a copy of the standing orders then existing and informed him that he was governed by the same. Till 1953 he discharged his duties at Madras and thereafter he was transferred permanently to Bangalore in 1953 and although he protested he was transferred giving him house rent allowance of Rs. 25 p.m. and this was changed to special allowance and he continued to draw the same. The company terminated the letter of appointment (agreement) by transferring him against his wishes and introduced various service conditions like other workmen in Bangalore.

It was stated that the Company introduced provident fund in 1949 and he was directed to contribute towards it and he did so; a gratuity scheme was introduced in June 1961 for all employees including him and the Company agreed to pay him gratuity at the time of his discharges; the Company had framed various standing orders to regulate service conditions of employees including him; the Company was also issuing various instructions directing him to carry out his duties from time to time.

The duties that he was performing in accordance with the various orders were stated to be:—

(1) he was attending the office regularly like any other employee at 8 A.M. and therefater as per instructions of his superiors would call on the customers like Binny Mills and service and repair weighing machines and carry the tool kit provided to him;

(2) whenever complaints were received from out-stations, necessary instructions were given to him to proceed to those places and carry out repairs and he would take further instructions from his superiors by correspondence, over phone and otherwise;

(3) if there was no work he would stay in the office till 5 P.M. like any other employee and he was given T.A. like any other employee when he was sent to out-stations;

(4) he used to report to Area Service Engineer (Lakshminarayan) as he was supervising his work and giving him instructions from time to time.

It was stated that although in the appointment letter he was called contract supervisor, the management changed his designation to charge-hand on 29th January 1963 but he continued to discharge his duties as before and in a letter of that date was told that so far as customers were concerned he would be referred to as service representative and this designation according to the I Party was only to please the customers and he was not even given any corresponding grade or emoluments and there was no change in his duties. The averments of the Company in this behalf may be summed up as follows:—

J. O. D'Cruz entered service under an agreement dated 31st March 1949 and it continued to be in force and his service were governed by the terms of that agreement. It denied that any copy of the standing orders was issued to him or was told that he was governed by them. It also denied that he protested against the transfer or that by the transfer the agreement terminated. The provident fund and gratuity scheme applied to all employees irrespective of their status. D'Cruz had been appointed as Contract Supervisor and continued to work in a supervisory capacity and was never demoted to a lesser status; as supervisor he had to supervise the work of the mechanics and coolies working under him and the mere receiving of instructions from his superiors did not make his job less supervisory. The designation as charge- hand was only a change in the nomenclature and did not involve any change in the status of D'Cruz. He continued to be a Supervisor and his duties did not alter by the change in the name of the office he held. The claim that he was a workman and not a supervisor was false to his own knowledge as would be clear from his own letters.

The I Party filed a reply statement in which it was set out that he had been employed in the scale Rs. 125-15-275/EB-20-355 and as a charge-hand and at the time of his discharge he was drawing basic wages of Rs. 385-00 per month and D.A. of Rs. 324-18 but since the incremental scale had not exceeded Rs. 500 and the nature of duties performed did not change he cannot be called a supervisor and further that the nomenclature was not the criterion to determine the status of a worker. The other averments are a reiteration of

the stand taken in the claim petition and refutation of the allegation made in regard to the merits in the counter statement of the II Party.

The aggrieved worker filed an affidavit and it was supplemented by his oral testimony: According to the averments in his affidavit the nature of duties performed by him were—installing, erecting, repairing and servicing various types of weighing machines, working like any other mechanic in the workshop, by attending office regularly; when he was sent out he used to take instructions and work accordingly; carrying out the work of installation etc., along with other mechanics. It was also averred that his immediate officer was the Area Service Supervisor and he was reporting to him about his work and he never contacted the Area Manager who was above the Area Service Supervisor and he had been issued instructions orally and in writing only by the Area Service Supervisor. During his oral testimony (by way of examination-in-chief) he stated that he had educated himself only upto VIII Standard in English and spoke about the list of tools given to him (Exhibit W-2) and a letter dated 29th January 1963 (Exhibit W-1) by which his upcountry allowance was increased from Rs. 8 to Rs. 10 per day effective from 1st January 1963. During the cross-examination he admitted that he applied for the post in response to an advertisement issued by the Company in 1948 and he was serving in the Royal Electrical and Mechanical Engineers (R.E.M.E.) before joining the Company. He was designated as "Contract Supervisor" in the appointment order and the advertisement was in regard to "Practical Supervisor". He stated that the Madras Office was called "Area Office" and in 1949 the Bangalore Office was a branch office coming under the Area Office, until about 1964 and there were two or three branch offices coming under the Area Office. The Area Service Supervisor Madras was the immediate superior for all the branches. He however admitted that some mechanics were attached to the Bangalore Branch Office. Further on he stated that in 1953 the area coming under the Bangalore branch was the whole of the old Mysore State and he was transferred to Bangalore in 1953 and the branch office had to attend to the erection, repair and servicing of weighing machines in the whole of the old Mysore State. This work according to him was being done by himself and two mechanics. He asserted that the two mechanics were doing their work directly under the instructions of the Area Service Supervisor at Madras and he and the two mechanics were of equal status and he had no control over them and work orders used to be received from Madras and he and they used to attend to them. However further on it was elicited from him that he was a monthly rated employee, while the mechanics were daily rated wage earners and they used to get overtime wages

but he was not. According to him he never worked overtime and therefore did not get any overtime wages. The Madras Office used to direct the mechanics to work overtime at times through the branch office and at times through him and in a case where the Madras Office directed a specified work to be completed within specified days, and he and the other mechanics had to do the job, the mechanics would work overtime but he would work only for his stated 8 hours of work. It was also elicited from him that he was paid a conveyance allowance at a stated monthly rate whereas the mechanics were given bus fares daily and whenever they went for work outside Bangalore he was given II Class train fair and subsequently I Class train fare while the mechanics were allowed only III Class train fare. For out-station work the mechanics used to be given "Compensatory allowance" but he was not as this allowance was permissible only to daily rated employees. The daily allowance paid to him was higher than that of the mechanics. He had been permitted a motor-bike and in that behalf he was being paid a conveyance allowance of Rs. 50 p.m. in 1963 and subsequently raised to Rs. 85. The mechanics were not given such conveyance allowance.

Further on it was elicited from him that every mechanic was required to submit a "time sheet" containing the details of work done by him and the number of hours of work done by him each day and he was countersigning them. Similarly he was countersigning the expense sheets submitted by the mechanics. Exhibit W-5 a file consisting of 67 papers of time sheets and a file consisting of 88 sheets of expense sheets so conuter-singed were admitted by him. He however added that he was also submitting time sheets and expense statements, but it was elicited that no one was required to countersign them.

He asserted that he had no authority to initiate disciplinary proceedings, but again admitted that he had issued "show cause notices" to the mechanics. However according to him this was on specific orders from his superior officers. But again he stated that sometime such orders were given orally and sometimes in writing but in a majority of cases this was oral. Two charge-sheets issued by him W-6 and W-7 dated 15th June 1964 and 29th February 1964 were admitted by him, to be in his own hand writing and in them it had not been stated that he was issuing them under instructions from or at the direction of some one else. From 1964 there was an Area Officer at Bangalore branch. Exhibit W-8 a warning issued by him to one Mr. Hamza and Exhibit W-9 a confidential report made by him regarding a mechanic A. Jesson and Exhibit W-10 and W-11 also against the said mechanic were also admitted by him. However according to him these were done on the oral instructions

of his superior. Further on he admitted that he was counter-signing the leave applications of the mechanics and Exhibits W-12. W-13 and W-14 were some of such applications. He was doing so because he had been asked to do so. Further on certain job records signed by him and another file of expense sheets and a file of time and expense sheets countersigned by him were admitted by him and marked as Exhibits M-1, M-37 and M-38. Certain letters addressed by him were also admitted by him and marked M-2 to M-33. A job specification dated 20th March 1964 issued to him was also admitted by him and marked as M-40. Among the documents M-2 to M-33 there is one service progress report marked as Exhibit M-16, dated 14th February 1964. At the end of it in the space provided against "Signature of the Service Supervisor or Mechanic" D'Cruz has signed. In re-examination he tried to explain that he had signed as Mechanic and had forgot to strike of the designation "Service Supervisor". This explanation is not at all convincing as in the beginning of the document under the heading "Supervisor's name" he has entered his own name and along side it under the heading "Men working with the Supervisor" names of four other persons are specified. By way of further examination-in-chief it was elicited that the tour expenses were to be approved by the supervisor and the leave as per the applications W-12 to W-14 were sanctioned by the Supervisor.

Even though the assertion of D'Cruz was that his status was just that of any other mechanic the answers elicited during cross-examination clearly establish that there was difference in the amount of emolument and he was a monthly rated employee whereas the other mechanics were daily rated, there was a difference in the dearness allowance and travelling allowance, and he was paid a motor-cycle allowance whereas the mechanics were not entitled to it.

The examination of D'Cruz concluded on 13th December 1967 and when the case was adjourned to 10th January 1968 a witness for the II Party was examined apparently because the I Party had no witnesses but subsequently on application was filed for I Party to examine further witnesses. The ground was that as he had no witnesses and feared an adjournment would not be given he did not make a submission in this behalf on 10th January 1968 and he wanted to examine the witnesses in order to show that he was also personally doing the work of erecting and servicing of machines. This application was allowed and thereafter four witnesses were examined.

Two of them are James Sunder Raj and Ananthan, an Assistant Engineer and Technical Assistant in I.T.I. The evidence of Sunderraj was that Avery Company used to supply the I.T.I. with precision weighing instruments and other types of weighing

machines. Such supply would be to the Inward Goods. Department of the I.T.I. who would move it to the guage control. The Gauge Control would check up the physical aspects and then send word to Avery Co. They would send their representative who would adjust them and submit them for their inspection. He could not remember the names of all such persons but said some times Mr. D'Cruz as well as Mr. Lowe used to come and they would personally attend to the work. He also stated that there was a contract for servicing of weighing machines with the Avery Co., between 1958 and 1964. The I.T.I. would phone them up in this behalf at any time the machines were out of order and the Avery Co., would send a batch of 4 to 6 persons and D'Cruz used to be one in the batch. Mr. D'Cruz would attend to Chemical balances, shadow weighing machines and Dial-type and impact testing machines and others would be attended to by the other persons. The reason given by him for this was that they were not allowing the others to handle sensitive machines. However the other mechanics would attend to the other machines and when the overhaul was over the I.T.I. people would test them and if they were not satisfied they would tell Mr. D'Cruz and he would set them right. Repair work had also been entrusted to Avery Co., and for this purpose they would send persons who were available. During the cross-examination he stated that the Avery Co., was not sending the names of the persons that were being sent but he would collect the names from Mr. D'Cruz and the personnel department would be instructed to issue passes. One such communication instructing the personnel department issued by him dated 26th November 1963 was admitted by him and marked Exhibit M-41. That is to the effect that Mr. D'Cruz and his party of six from Avery Co., were coming to the factory or overhauling the Avery Weighing machines and the necessary passes may be issued to them. In that Mr. D'Cruz is described as supervisor and a copy is also sent to him addressed as supervisor. The witness further said that Mr. D'Cruz would ask the other persons to attend to particular machines. The witness would not be present at the spot of overhauling or servicing. One completion report signed by him is marked Exhibit M-42 and the annexure to it marked Exhibit M-42(a), containing a list of machines totalling 87. When asked if he could say which were the machines attended to by Mr. D'Cruz, he mentioned some 15 machines, but he could not say how much time would have been occupied in respect of them; the total period during which all the 87 machines were overhauled was a month and the witness said that the entire period would not required for the 15 machines. The answer in regard to the number of machines that would be attended to by Mr. D'Cruz was given by going through the list which however does not specify the person who attended to them. Obviously the answer is based on the description of the machine given in the list which according to him would be sensative instruments that would not be allowed to be handled by others. However

the evidence of Lakshminarayan who was posted as Area Service Engineer in November 1964 for Mysore and Andhra Pradesh area and later in 1966 became Area Service Supervisor is that only 6 machines in Exhibit 42(a) would have to be attended to by the supervisor. According to him there were approximately 2,000 machines of different types serviced by the Company at present and out of them only about 50 would have to be serviced by the supervisory staff. The supply of these machines being by Avery Co., the evidence of Lakshminarayan who is aware of the nature of the machines is entitled to be preferred.

Ananthan was a Senior Inspector working under Sunder Raj and it was elicited from him that he was working in meteriological section and looking after the weighing machines was only a part of his duties and this was so in regard to Mr. Sunder Raj also. During cross-examination he stated that he only knew a batch of persons were coming from Avery Co., and did not know their designation or duties. Only in regard to D'Cruz he was described as "Supervisor" in Exhibit M-41.

Poovan (W.W.-4) is a worker in Avery Co. His evidence is that D'Cruz used to service and repair weighing machines and he had seen him do that work. He also deposed that D'Cruz had given him charge-sheet Exhibit W-6, dated 15th June 1964 and he had given an explanation as per Exhibit W-16. According to him this was given to the Area Supervisor. But he also said that he was illeterate and knew only how to sign in Tamil and when an application Exhibit M-44 was shown to him he admitted having signed it but could not say how he had described himself. That is an application for leave, dated 16th September 1964 and it is approved by D'Cruz and in it he is described as unskilled though according to him he is a semi-skilled worker. Even according to him his work was to transport test weights to places where the mechanics used to go and to clean and dust off machines attended to by machanics. His evidence clearly discloses that D'Cruz was the person who had given a charge-sheet to him and Exhibit M-44 shows that his applications for leave is approved by D'Cruz. He also says that some times D'Cruz was giving him directions. It was elicited from him that he was not necessarily going to the places where Mr. D'Cruz used to go. While admitting that the charge-sheet W-6 had been given to him by D'Cruz he went on to say that he told him that he had not committed any mistake and asked him why he was giving him a charge-sheet and to that D'Cruz told him that he had been asked by the Area Supervisor to do so. The explanation Exhibit W-15 does not make mention of such a thing and it is surprising that the witness is able to remember an explanation said to have been given by D'Cruz for giving the charge-sheet in 1964. In fact Exhibit W-15 shows the

blame on D'Cruz that he was want only trying to harm him. The evidence of this witness in regard to the nature of duties of D'Cruz as being to service and repair machines is not entitled to be given credence.

Hamsa the other witness examined for the I Party was a mechanic in Avery Co., and he had been removed from service recently. Accordingly to him D'Cruz used to come for work with them and he used to personally work. He had gone along with him for work in the I.T.I. D'Cruz used to work on balancing machine and chemical balances at that place and would attend to the work himself if it was a small work and would take the help of the others if it was a big work. According to him the others would not attend to the instruments that were being attended to by D'Cruz. He went on to say that the workshop clerk was the person who used to send him or outdoor work. He was also being sent to outstations. He admitted that after return from tour he used to give account and submit time an expense sheet but according to him he would give them to the work shop clerk and he did not know who passed it or made deductions or disallowed any item. During the cross-examination, however, when he was shown the tour expense sheets M-45 (a to j) he admitted that they did not contain the signature of the workshop clerk but they had the signature of D'Cruz. He also admitted having written the time and expense sheets Exhibit M-46 (a to i) and that they contained the signature of D'Cruz. Exhibit M-47 is a complaint made against D'Cruz, dated 25th March 1961 to the Company. It bears the signature of this witness and this is admitted by him. It is also signed by certain other mechanics. One of the complaints was that Hamza had been necked out by D'Cruz and another Sampangy had been asked to get out; another was that D'Cruz was giving jobs to mechanics in out-stations at his whims and fancies; the third was that he was asking each mechanic to do six machines whereas formerly only three mechanis were being allotted to two members. It was represented that they had been put to great sufferings on account of this supervisor and wanted an investigation into the matter and justice meted out. This was addressed to the Madras Office through the Branch Manager Mr. T. V. S. Rao who was the Branch Manager (M.W-3) at that time has deposed that the mechanics came to him personally and after enquiring Mr. D'Cruz about it he pacified both of them. The evidence of Hamza is that the incident referred to in Exhibit M-47 had not happened and the contents of it had not been read over to him and he singed it as the first as he had been asked to do so by the others. Exhibit W-8 is a copy of a warning issued to the witness by D'Cruz, but the witness said that he had not been issued any such warning. This is contrary to the evidence of D'Cruz. The

witness is a literate person and the explanation sought to be given in regard to M. 47 and the denial of the warning as per Exhibit W-8 are not acceptable. It is obvious that he has come to favourably depose in favour of D'Cruz now that he has been removed from service. Towards the end of the cross-examination the witness stated that in the I.T.I. the machines were scattered all over the factory and only if he and D'Cruz worked in the same place he would see him and otherwise he would not be seeing him. During the re-examination he stated that he did not know when D'Cruz had put his signatures to the Tour expense sheets and he had given them to the workshop clerk without his signature and D'Cruz must have signed them later. The evidence of D'Cruz is not to this effect. His evidence is that the mechanics use to submit them to him and he would counter-sign. Even from the examination-in-chief it is clear that D'Cruz was not doing the work all by himself. The evidence of this witness does not establish that D'Cruz was only a mechanic. The averments in M-47 clearly disclose that he was alloting work to the mechanics and his duty was to supervise their work and also to take disciplinary action.

Of the witnesses examined for the II Party, E. Srinivasan (W.W. 1) is a mechanic. He came to the Bangalore Office in 1961. At that time there were five mechanics and Mr. D'Cruz and Mr. Lowe were the Supervisors. They were alloting work to the mechanics and pass the weekly time sheets and expense statements. If the mechanics found any complications in the work allotted to them they would report to the supervisor in the evening and they would given them instructions and at times occasionally came to the work spot and help them to complete the work. He stated that there was no occasion to D'Cruz to work side by side with him and that it was not correct to say that D'Cruz was working as a mechanic like them. The Bangalore Office was formerly a branch under Madras Office. He denied that during that time the Madras Office was alloting the work to the mechanics. The Bangalore Branch became an Area Office in 1964. During cross-examination he denied that Lakshminarayan was distributing work to the mechanics, but stated that the supervisors were alloting work. The supervisors used to hand over the work challans to the mechanics. It was elicited that once D'Cruz had accompanied him to out station work at Shahabad for erection work and both of them had attended to it.

T. V. S. Rao examined for the II Party was the Branch Manager at Bangalore from 1959 to 1965 and prior to it from 1954 to 1959 was a representative in charge at Bangalore. According to him the set up at Bangalore from 1954 to 1959 on the service side was that D'Cruz was in charge of it as Service Supervisor or Contact Supervisor and under him were two mechanics to whom he would allot the work

every day. The jurisdiction of the Bangalore Branch on the service side between 1954 and 1960 was the old Mysore State and thereafter the new Mysore State and Mr. D'Cruz had to attend to the work in these areas, and within that jurisdiction he had to arrange his own programmes and no one else would allocate him work. After 1960 on account of the expansion of the area of work another Supervisor was got from Madras and that was Mr. Lowe. Between themselves they would arrange the work and he was not giving them any directions. The service clerk would hand them over the challans and they would make the further arrangements . The challans or workorders would contain the name of the customer and some details of the machines to be serviced, etc. It was elicited from him that some time the work orders may be marked for the attention of the Superivsor if the job was important or urgent but he also stated that it did not mean that it had to be attended to by himself. He stated that after the job is over the work orders or challans would not be preserved.

Lakshminarayan (M.W. 2) came over to Bangalore in November 1964 and at that time D'Cruz was the charge-hand at Bangalore was doing the duties of a supervisor. The duties of the supervisor, according to the witness, was to plan and programme the work, allot work to the mechanics and supervise their work and approve expense statements submitted by them as also time sheets maintained by them and he had powers to recommend leave and initiate disciplinary action. These were the duties performed by Mr. D'Cruz. Through him a sample of a challan issued by the office and a visit voucher were produced and marked Ex. M. 50 and M. 51. They do not specify who is to do the job. According to him the supervisor plans the work of the mechanics and hands over the voucher to the mechanics for carrying out the work. During his cross-examination an instruction issued on 28th February 1964 *inter alia* mentioning that the mechanics were not submitting the timesheets in time and they should submit it to the workshop clerk every Monday for the previous week along with the statement of expenses was put to him on his admitting it was marked Ex. W. 20. He laso stated that the supervisor would approve of them when he returned to the workshop. The instruction itself indicates that it was for the notice board and a copy of it was marked to D'Cruz. This shows that he had to scrutinise it. In regard to contract orders an instruction addressed to contract clerk and all supervisors on 5th November 1951 was marked as Ex. W. 22. The supervisors were given instructions in regard to the subject and what the form (a sample of which was attached to it) should contain and one instruction was to enter names and ticket number of men employed on jobs and hours worked, etc., and to initial at "time certified". This indicates that the supervisor was entrusted with the planning of work. Suggestions were made

to him that he was regularly programming the work for the supervisor and the mechanics but he denied it. He however admitted that whenever instructions were necessary he would issue them. One such Ex. W. 21, dated 16th December 1964 was to D'Cruz when he was at Mangalore requesting him to inspect the foundation laid for a weighbridge at Mysore on his way back. He also admitted that he would check up the time sheets and normally payments were made after he went through the time sheets that had been approved by the supervisor but sometimes when he was out of station payments would have been made on the approval of the supervisor and he would later spot check the time sheets. It was also elicited from him that the supervisor would approve the leave for mechanics and he would finally sanction them and so far as supervisory staff was concerned he had to sanction the leave. The answers elicited that he was the final authority in regard to sanctioning of payments or leave or that whenever any necessity arose to give instructions he was instructing the supervisors does not affect the position of a supervisor in the organisational set up. The evidence of Lakshminarayan that the duties D'Cruz was performing was of a supervisory nature is abundantly borne out by the voluminous documentary evidence on record.

On the leave application submitted by one A. Jesson, a mechanic dated 30th November 1964 (W. 12) for grant of 9 days leave, D'Cruz has remarked "only two days leave available and year end programme to be completed". The application was addressed to the Area Service Engineer. D'Cruz was issued a letter of warning to the same mechanic under W. 10, dated 30th March 1965 and made a confidential report against his work and behaviour on 25th February 1964 (W. 9) and another report in this behalf on 4th March 1964 (Ex. W. 11) Ex. W. 17 is a letter addressed to Mr. D'Cruz and Mr. Lowe by the Secretary to the Branch Manager on 5th December 1962 requesting them to advise with their recommendations as to the grades in which the existing fitters could be placed. It is elicited from Lakshminarayan that the mechanics were formerly called fitters. Apparently advice was sought from them because they knew the nature of work the men had to handle and their capacity. Circulars and instructions issued from time to time have been produced in evidence. One significant point to be noted is that most of them are addressed to the supervisors and many of them marked "confidential". They contain instructions, in some cases in regard to specific defects or short comings and some contain matters of guidance to the supervisors in the manner they should deal with the mechanics and get work done or increase the out put. They all indicate that the supervisors were regarded as the persons through whom the work had to be arranged and carried out.

Ex. W. 3 was the application submitted by D'Cruz when he sought the appointment in response to an advertisement in the 'Mail' for a practical supervisor. He stated that he had sound general education in St. Patrick's High School at Adyar, Madras and it had since sharpened through extensive travel. So far as his practical and technical experience was concerned this is what he stated :—

> "Regarding my technical and practical experience I beg to state that I am a Class I general mechanical fitter—Supervisor according to the British army standard of trade testing, having served in the R.E.M.E. for a period of six years. My apprenticeship as a fitter/mechanist was served with M/s. Bird & Co's Engineering workshop at Kumardhubi from 1937 to 1939. I later worked in the International Construction Company for another two years prior to joining the Army.
>
> My experience covers, construction, erection, maintenance of machine tools and pneumatic-tools and benchwork involving the use of micrometers, verniers, etc., etc. Having been an N.C.O. for three years of my service I am quite competent to supervise any kind of fitting or fitter's work and feel confident I will prove an asset to your firm"

Subsequently an agreement Ex. W. 4 was executed by D'Cruz on 31st March 1949 on his appointment as contract supervisor. The application given by him clearly discloses his technical knowledge and experience and his capacity to supervise. The appointment was as contract supervisor. Subsequently on 29th January 1968 his designation was changed to "Charge-hand" but this was stated to be for internal purposes only and so far as customers were concerned he would be referred to as "Service Representative" (*Vide* Ex. W-94). But it is the common ground of both the parties that even though designations changed the duties continued to be the same throughout.

Exhibit W-55 is a job specification which was issued to D'Cruz. This was given to him addressed as Contract Supervisor with a covering letter Exhibit W-54, dated 20th June 1957 which was as follows "To give you a general idea of what is expected of you and to assist you in your duties, a job specification is enclosed which please attach to your agreement." Exhibit 55 is styled as Job Specification for contract supervisors. The preamble to it is "Field work efficiency" can be summed up as "Contract Supervisor Efficiency" as whatever efficiency emanates from a supervisor has its effect on the workmen under his direct control". A few of the responsibilities detailed therein are "maintain, protect and increase the good will of the Company"; "plan, control and arrange that

all field work, *i.e.*, contracts, repairs, installation are carried out efficiently and in reasonable time"; "plan his tours so that jobs do not overlap and travelling time is reduced to a minimum"; "see that company's instructions regarding cash matters, tour reports and records are implemented"; "Ensure that mechanics are properly equipped with respective tool bag or case containing efficient and adequate tools" "see that workmen have suitable accommodation on tour" "encourage workmen employed on fieldwork to be 'alive' for S.I.F's" "co-operate fully with sales and Area Office staff". This clearly brings out the distinction between the workmen or mechanics and the supervisor, the former are to be under his direct control. He has to plan and exercise initiative and has powers of control.

Exhibit W-10 is a letter addressed to D'Cruz, dated 23rd November 1954 confirming the rescinding of a transfer and it refers to sending of a grade III Mechanic and mentions "as agreed you will encourage Doss, Coolly and train him up into semi-skilled labourer, eventually to Grade III Mechanic. This should be done as soon as possible, and as soon as you can sincerely recommend it, I am prepared to pay him Grade III rates." This indicates that the recommendation of D'Cruz was insisted upon and he had the duty to train up the mechanics and they were under his control even from the early stages when the Bangalore Office was a branch.

There was a Service Conference held on 17th January 1963 and one of the persons who were invited and were present was D'Cruz. A record of the meeting has been marked as Exhibit W-65. It was for the supervisory staff and general instructions are contained in it in regard to their duties and particular reference has been made to their work of supervision of the mechanics and reporting against any one not giving his best. A mere mechanic would not participate in such a conference.

M-14 and M-15 are two notices put up under the signature of D'Cruz in January and February 1964 wherein he has specified the persons who would be going for out station work and copy of it is sent to Accounts Department. These clearly indicate that he was programming the work for the mechanics.

Two documents were specifically referred to by Sri Sachindranath and his contention was that they by themselves would establish that D'Cruz was nothing but a highly skilled mechanic. These are M-23 and M-66. Exhibit M-23, dated 4th May 1966 is a letter addressed to D'Cruz in which it was complained that he had refused to erect and commision the lap weighing scale of Ganesar Textile Mills and that he had told the customer that he had been deputed only to rectify the defects. It also refers to an explanation given

by D'Cruz. It was stated that he being a senior charge-hand the Company took a dim view of his attitude. The letter ended by an advice to carry out his responsibilities with greater care and to display the sense of responsibility required of the company's supervisory staff. W-66 is a confidential "Special instructions" addressed to D'Cruz dated 24th April 1950. This was when he was in Madras. The portion in that letter that is emphasised by Sri Sachindranath is where he was asked to have one repair job always on hand on which he would work from time to time and in respect of which he would be given theoritical and practical instruction. A reason was also stated that "It is the custom in the U.K. for a foreman to do a repair job to reduce the over head charge on the workshop." It also contains the instruction "you should also assist the mechanics in whatever way you can, remembering that although you are in charge of the workshop it is your duty to further the work of the workshop, not merely watch it." The concluding para is of significance. It is "You are also asked to exercise overall supervision over local work being done externally...." The instruction in W-66 was in the initial stage soon after D'Cruz joined service and the instruction to have a repair job on hand does not imply that it was his main work. Read as a whole W-66 brings out the difference in his status as supervisory staff and emphasises what his responsiblity was as such supervisor. The letter M-23 was just prior to his discharge from service. Even in that letter what is complained of is in relation to his default in carrying out his responsibility as a supervisory staff. The contention that these two documents establish that he was only doing manual work just as a mechanic cannot be accepted.

Exhibit M-2, dated 9th June 1953 is a letter issued to D'Cruz at the time of his transfer to Bangalore. He was required to understand and signify his approval to the same. D'Cruz has endorsed on it "Received understood and approved". In that letter it was stated "Your duty will be to exercise general and particular supervision over the whole of the service work in Bangalore territory and to hold yourself available for any other jobs outside that territory as may be required by Service Engineer." It was also stated "The reason we are sending you to Bangalore is that we want the quality of the service there improved; it is thus an excellent opportunity for you to show your worth and capabilities.... It will also be your duty to train and instruct such mechanics appointed permanently to the Bangalore workshop and we regard this as particularly important." This letter also belive the contention that he was transferred to Bangalore against his wishes on the agreement stood terminated.

It is clear that the duties and responsibilities entrusted to him and performed by him were in accordance with the job specification for contract supervisors. Such performance is clearly referable to

the job specification, and the purpose for which he was employed. The attempt made by D'Cruz that he was counter-signing time and expense sheets and took some action against the mechanics only because he was asked to do, cannot be accepted. Such duties were performed regularly and over a considerable period.

Sri Sachindranath cited before me several cases pointing out instances where a manager, engineer, etc., were held to be not employed in a supervisory capacity. Each case depends upon the particular facts and evidence in them and it is not necessary to discuss each of them. In the case reported in 28 F.J.R. 394 (1965 II LLJ 175-A.I.R. 1966 S.C. 305 Reserve Bank Employees' Association *Vs.* Reserve Bank) the Supreme Court discussed the amendment of the definition of workman by the amending Act of 1956 and similar provisions in other countries and noticed several illustrative cases cited before it and the import of the expression "Supervisory" was explained. It approved the observation of the Labour Appellate Tribunal in Ford Motor Company of India Ltd., *Vs.* Their Workman (1951-IV F.J.R. 65) that the question whether a particular workman is a supervisor within or without the definition of "Workman" is ultimately a question a fact, at best one of mixed fact and law and will really depend upon the nature of industry, the type of work in which he is engaged, the organisational set up of the particular unit of industry and like factor" While discussing the case of Class II employees it was observed "These employees distribute work, detect faults, report for penalty, make arrangements for filling vacancies, to mention only a few of the duties which are supervisory and not merely clerical" These are a few of the attributes of a supervisor. As observed in Mcleod Co., *Vs.* Sixth Industrial Tribunal (1958 Calcutta, 273), "whether a person's" employment is in a supervisory capacity or not in a particular case must not be judged by any hair splitting analysis whether it is mainly or subsidiarily supervisory, but broadly by a total consideration of the essential nature of his work, office and entire context of his employment". In this case the evidence on record fully establishes that D'Cruz was employed as a supervisor and his functions were to plan, distribute work, supervise the work of mechanics, initiate disciplinary action against them, train up the mechanics, report about and control their work, approve the time-sheets and expenses, make recommendations in regard to the promotion of the mechanics and to be in charge of the general supervision of the servicing in the territory in which he was employed. The emoluments and other facilities afforded to him in the matter of travelling allowance, dearness allowance and motor cycle allowance negative the contention that he was only a mechanic or a highly skilled mechanic as was urged by Sri Sachindranath. The technical knowledge he had was itself a qualification to supervise the mechanics and it was on that account he was made the supervisor. There is

evidence that in respect of a few precision installations he would attended to them personally. This would not detract from his position as supervisor which was the essential character of his functions and employment. The fact that some persons above D'Cruz were exercising control over him or giving him directions does not affect his position as a supervisor within his sphere of activities and his own functions. The purpose of employment has to be considered (*Vide* 1964 II LLJ 164).

It is not in dispute that at the time of his termination he was drawing wages exceeding Rs. 500 "Wages" as defined in the Act includes allowances he was entitled to including dearness allowance. But Mr. Sachindranath urged that the basic salary did not exceed Rs.385 and at the time of the amendment of the definition of workman D'Cruz was not drawing more than Rs. 500 and his employment started earlier to 1957 and his position would not be affected. In this behalf he placed reliance on the observations of the Supreme Court in the Reserve Bank Employees case referred to earlier. I do not think the observatinons of the Supreme Court have any application to the facts of this case. What the Supreme Court said was "Supervisory staff drawing less than Rs. 500 per month cannot be debarred from climing that they should draw more than Rs. 500 presently or at some future stage in their service. They can only be deprived of the benefits if they are non-workmen at the time they seek the protection of the Industrial Disputes Act." The fact that D'Cruz started service prior to the amendment of 1956 or his basic salary scale was less than Rs. 500 does not affect the position as the point of time to be considered in regard to the quantum of wages is the date of termination of his service and wages as defined at that time. It is in evidence that in 1966 D'Cruz was drawing Rs. 385 at basic salary and about Rs. 320 as D.A. and a motor cycle allowance of Rs. 85 per month. It is therefore clear that his wages exceeded Rs. 500 p.m.

It was sought to be made out that D'Cruz had been told that he was governed by the Standing Orders of the Company and he had also been given a copy of the standing orders. Lakshminarayan stated that it was not correct to say that the standing orders were made applicable to D'Cruz. His evidence is that he was governed by the agreement entered into by him and in regard to leave he was governed by the terms of agreement. There is no documentary evidence to show that at any time a copy of the certified Standing Orders was sent to D'Cruz or he was told that they apply to him. In regard to very matter relating to his emolument or increment or allowance there is written record. The mere statement of D'Cruz that he was given copy of the standing orders or that he was told they were

applicable to him cannot be believed, besides being vague. A copy of the standing orders of the Company was filed into court by Sri Sachindranath. In that workman has been defined as meaning "persons employed by the company to do any skilled or unskilled manual or clerical work for hire or reward but does not include officers and covenanted hands". *Prima facie* it excludes persons in the category of D'Cruz. It was elicited that D'Cruz was contributing to the provident fund and there was a gratuity scheme in vogue in the company. The evidence of Sri Lakshminarayan is that except the European officials all the employees were contributing to the provident fund and the gratuity scheme was also applicable to all the employees except the European officials. This aspect of the matter does not lead to any inference that D'Cruz was only a mechanic.

Having regard to the evidence on record and the circumstances of the case I hold that D'Cruz was employed in a supervisory capacity and was drawing wages exceeding Five hundred rupees per month at the date of the termination of his service and was not a workman as defined in the Industrial Disputes Act by virtue of the provisions of Section 2(g) (iv) and accordingly the reference was not competent and this court has no jurisdiction to adjudicate upon the dispute. The reference is therefore rejected. The parties shall bear their own cots.

M. K. SRINIVASA IYENGAR,
Presiding Officer,
Labour Court, Bangalore.

"Copy"

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